

BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In the Matter of )  
 )  
Amendment of Section 73.202(b), )  
Table of Allotments, FM Broadcast )  
Stations (Sturgis, Kentucky) )  
 )

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MM Docket No. 96-220-  
RM-8893

DOCKET FILE COPY ORIGINAL

To: Chief, Allocations Branch

COMMENTS AND COUNTERPROPOSAL  
OF PINNACLE SOUTHEAST, INC.

Pinnacle Southeast, Inc. ("Pinnacle"), licensee of WYNG(FM), Evansville, Indiana ("WYNG"), respectfully submits comments in response to the above-captioned Notice of Proposed Rulemaking, released November 1, 1996.

The Petitioner, JoeMyers Productions, Inc., proposed the allotment of Channel 289A at Sturgis, Kentucky and Channel 267A at Princeton, Kentucky. The Petitioner subsequently withdrew the proposed allotment of Channel 267A at Princeton.<sup>1/</sup> The Commission's engineering analysis determined that Channel 289A could only be allotted to

<sup>1/</sup> Withdrawal of Petition for Rule Making, filed November 20, 1996, in MM Docket No. 96-204, RM-8876. Prior to its withdrawal, the requested allotment was found to be mutually exclusive to the proposed allotment for Channel 267C3 at Martin, Tennessee, in MM Docket No. 96-204, Notice of Proposed Rulemaking (Martin and Tiptonville, TN), 11 FCC Rcd 12695 (1996) and, had it not been withdrawn, would have been considered as a counterproposal in that proceeding.

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Sturgis with a site restriction of 1.4 kilometers (0.8 miles) southwest to avoid a short-spacing to WYNG.

WYNG is one of the pre-1964 grandfathered short-spaced FM stations whose ability to modify or improve its existing facilities or relocate its transmitter is severely restricted by the Commission's current rules.<sup>2/</sup> As set forth in the attached Technical Exhibit, WYNG presently operates on Channel 287B at only 119 meters above average terrain, rather than the maximum of 150 meters allowed for Class B facilities.<sup>3/</sup> Under the Commission's current limitations, WYNG cannot upgrade or even maximize its current facilities because of its grandfathered short-spacing situation. Indeed, the only means now available to WYNG to upgrade its facilities and relieve its grandfathered short-spacing situation would be to move its transmitter away from the direction of its short-spacing.<sup>4/</sup> However, any available transmitter relocation sites in this direction would effectively be blocked by the allotment of Channel 289A at Sturgis.<sup>5/</sup>

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<sup>2/</sup> The Commission has become sufficiently concerned that its rules may be needlessly hampering the operational flexibility of grandfathered short-spaced FM stations that it has recently initiated a rulemaking process to eliminate burdensome regulations and streamline the method for these stations to improve their facilities and relocate their transmitter sites. Grandfathered Short-Spaced FM Stations, Notice of Proposed Rule Making, MM Docket No. 96-120, RM-7651 (June 14, 1996). This proceeding, of course, must be analyzed under the Commission's existing rules.

<sup>3/</sup> Technical Exhibit at ¶2.

<sup>4/</sup> Id.

<sup>5/</sup> Id. at ¶3.

Pinnacle opposes the drop in of Channel 289A at Sturgis because it effectively boxes WYNG in to its present facilities. The combination of the regulatory restrictions on grandfathered short-spaced FM stations and the drop in of a new Class A facility, even with the proposed site restrictions, virtually forecloses any opportunity for WYNG to improve or maximize its current facilities to better serve Evansville or to find a new transmitter site to eliminate its short-spaced situation. Commission has recognized the severe hardships facing grand-fathered short-spaced FM stations in attempting to improve their facilities and service to their communities in an increasingly crowded and competitive FM market. It would be inconsistent with its efforts to ease the burden on grand-fathered short-spaced FM stations for the Commission to fail to take the special circumstances of stations such as WYNG into consideration when weighing the potential adverse effects of shoehorning in a new, minimum FM facility.

Fortunately, in this case, the conflict between the ability of WYNG to improve or upgrade its facilities and the allotment of a new Class A facility to provide Sturgis with its first local aural transmission service can readily be avoided by the allotment of Channel 267A instead of the requested frequency.<sup>6/</sup> Consideration of the availability of an alternative channel for the new allotment is appropriate in cases where the drop in of a Class A facility would box in an existing station, making improvements or upgrades to that station difficult, if not impossible. See Honor, Michigan, 11 FCC Rcd 5301 (1996); see also, Columbia, et al., Missouri, 10 FCC Rcd 12624 (1995) (resolving conflict between upgrade of existing facility and

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<sup>6/</sup> Id. at ¶¶4-6.

new Class A facility by assigning alternative available channel to new facility). With the petitioner's withdrawal of his request for Channel 267A at Princeton, that channel became available as an alternative for allotment at Sturgis. The alternative channel is fully equivalent to the requested facilities and would not adversely affect the petitioner's ability to serve Sturgis and the surrounding communities. The substitution of Channel 267A for Channel 289A at Sturgis would also free WYNG to pursue its available alternatives for the upgrading or maximizing of its facilities.<sup>7/</sup>

In sum, the allotment of an alternative, available channel in this proceeding furthers Commission policy by permitting both the improvement of facilities of an existing station and the initiation of a new FM service at Sturgis. Moreover, the allotment of Channel 267A at Sturgis can be done without the site restrictions required for the requested frequency.<sup>8/</sup> As the Commission clearly favors the grant of the least restrictive new allotment, the use of Channel 267A should be preferred over the requested channel. Newberry Springs, California, 10 FCC Rcd 5047 (1995) (where new A facility allotment would preclude new transmitter site for existing station, conflict to be resolved by alternative channel, if available; alternative channel without site restriction preferred); Hayden and Meeker, Colorado, 11 FCC Rcd 10040 (1996) (where conflict between different class facilities, higher class is preferred, but first preference is to allow both if alternative channel is available for Class A facility without site restriction).

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<sup>7/</sup> Id. at ¶4.

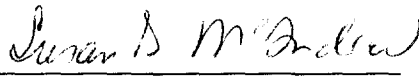
<sup>8/</sup> Id. at ¶¶4-5.

Conclusion

For the foregoing reasons, Pinnacle respectfully requests that, should the Commission allot a channel to Sturgis, Kentucky, it allot Channel 267A, in lieu of the requested Channel 289A.

Respectfully submitted,

PINNACLE SOUTHEAST, INC.

By:   
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December 23, 1996

# GRAHAM BROCK, INC.

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BROADCAST TECHNICAL CONSULTANTS

**COMMENTS AND COUNTERPROPOSAL**  
**PINNACLE SOUTHEAST, INC.**  
**MM DOCKET #96-220**  
**WYNG-FM RADIO - CH 287B**  
**EVANSVILLE, INDIANA**  
**December 1996**

**TECHNICAL EXHIBIT**

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**COMMENTS AND COUNTERPROPOSAL**  
**PINNACLE SOUTHEAST, INC.**  
**MM DOCKET #96-220**  
**WYNG-FM RADIO STATION**  
**EVANSVILLE, INDIANA**  
**December 1996**

**TECHNICAL STATEMENT**

1. This Technical Statement and attached exhibits were prepared on behalf of Pinnacle Southeast, Inc. ("Pinnacle"), licensee of radio station WYNG-FM, Channel 287B, Evansville, Indiana. These comments are submitted in response to the Commission's Notice of Proposed Rule Making in MM Docket #96-220, DA 96-1772., proposing the allocation of Channel 289A at Sturgis, Kentucky, as that community's first local service. In the Notice of Proposed Rule Making, the Commission indicates that Channel 289A can be allotted to Sturgis, Kentucky, with a site restriction of 1.4 kilometers southwest of the community in order to avoid shortspacing WYNG-FM in Evansville, Indiana.

**DISCUSSION**

2. The allocation of Channel 289A to Sturgis will preclude the possibility of a WYNG-FM relocation which would enable it to become a maximum Class B facility with 50.0 kilowatts at 150 meters height above average terrain. At present, WYNG-FM has a 1964 grandfathered shortspace with WITZ-FM, Channel 284B, Jasper, Indiana.<sup>1</sup> Due to the shortspace with WITZ-FM, WYNG-FM, as currently licensed at 50.0 kilowatts at 119 meters height above average terrain, is precluded from increasing the overall height above average terrain of its facility to maximum Class B since it would cause the 1.0 mV/m contour to extend toward the

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1) In addition, there is also a 1989 shortspace to Class A station WKYA, Channel 288A, Greenville, Kentucky. This shortspace was caused by the Commission changing the minimum distance separation requirements for Class A stations to authorize maximum 6.0 kilowatt Class A stations in lieu of 3.0 kilowatt Class A's.

grandfathered shortspaced station. As such, the only ability WYNG-FM has to maximize its facilities is to locate a site approximately 8.11 kilometers southwest of its current facility in order to eliminate the shortspace with Jasper. This would then enable WYNG-FM to be a maximum Class B facility.<sup>2</sup>

3. As can be seen on Exhibit #1, a usable area map for Channel 287B at Evansville, Indiana, the only potential clear usable area for a WYNG-FM relocation is precluded by the proposed allotment of Channel 289A at Sturgis, Kentucky.<sup>3</sup> Exhibit #2 is a spacing study for Channel 287B at Evansville, Indiana.<sup>4</sup> Therefore, WYNG-FM is precluded from maximizing its facilities at Evansville if this allotment is made.

4. A review of possible alternative channels for Sturgis was undertaken to determine the availability of another Class A frequency that could be allotted to Sturgis in lieu of Channel 289A which would not impact a WYNG-FM relocation. It has been found that Channel 267A can be allotted to Sturgis without the imposition of a site restriction. The availability of Channel 267A is due to a withdrawal of a requested rulemaking seeking to allot that channel to Princeton, Kentucky, in MM Docket #96-204, RM 8876. With this withdrawal, Channel 267A is readily available for allotment at Sturgis, Kentucky.

5. Channel 267A can be allotted to Sturgis, Kentucky, without the imposition of a site restriction at reference coordinates North Latitude 37° 32' 54" and West Longitude 87° 59' 06". A 3.16 mV/m contour can be delivered over all of Sturgis from the hypothetical allocation

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2) The relocation of WYNG-FM to the southwest would be proposed under §73.215 to address the shortage to first adjacent station WKYA, Channel 288A, Greenville, Kentucky. The limiting factor of Channel 289A at Sturgis, Kentucky, would only allow a 2.0 kilometer shortage which would be insufficient to eliminate the shortage to WITZ-FM.

3) The limitation of WKYA is based on the maximum shortspacing allowed in §73.215 of the rules.

4) See Footnote 3 supra.



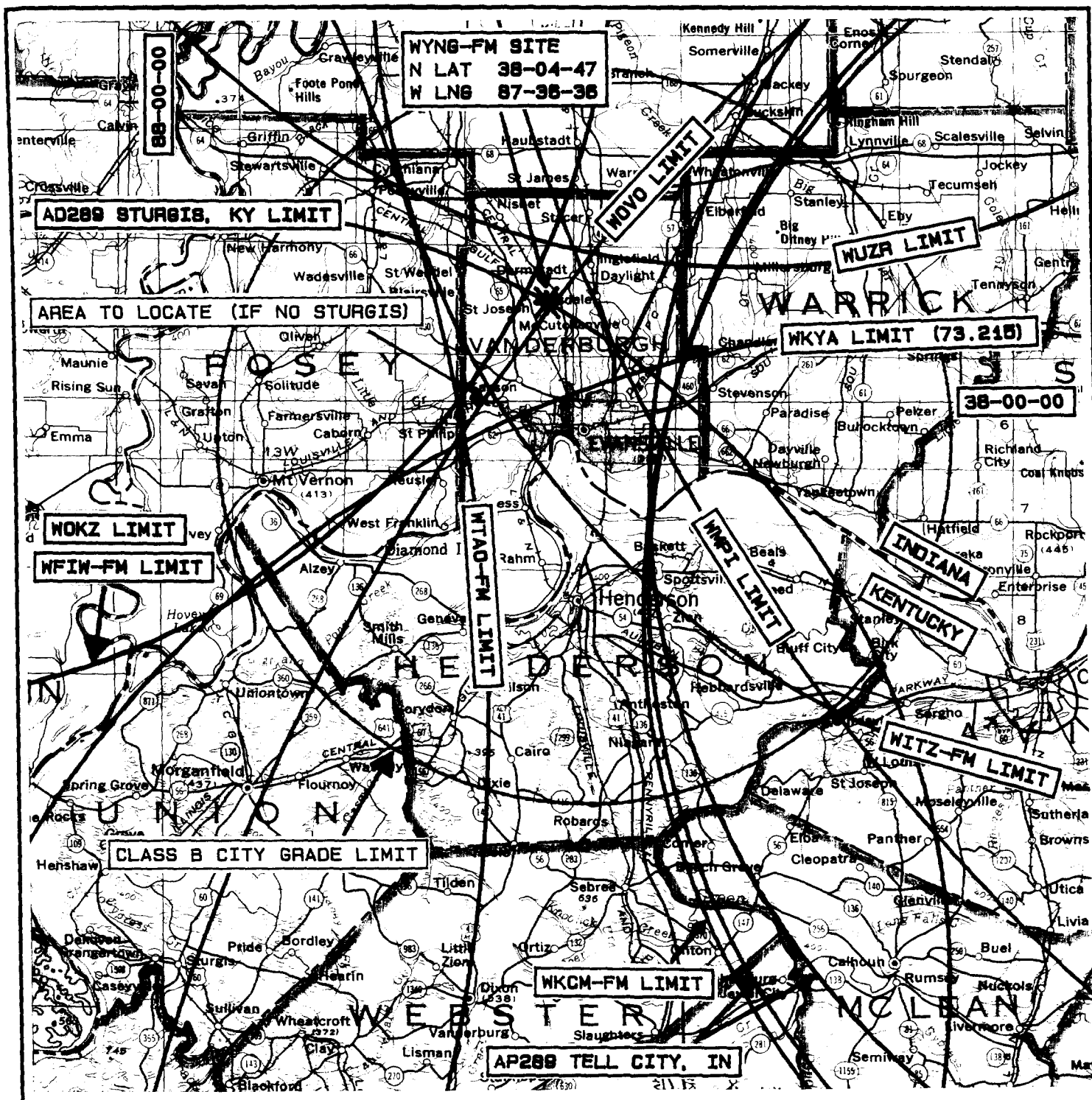
reference point. As can be seen on Exhibit #3, Channel 267A meets the Commission's minimum distance separation requirements, §73.207, from the proposed allotment site. Pinnacle's proposal to allot Channel 267A to Sturgis in lieu of Channel 289A should not be construed as an expression of interest in the channel.

6. Therefore, Pinnacle hereby requests, that should the Commission allot a channel to Sturgis, Kentucky, that the following change to the Commission's Table of FM Allotments be made in lieu of the requested Channel 289A:

**Sturgis, Kentucky**

<u>Present</u>	<u>Proposed</u>
None	267A

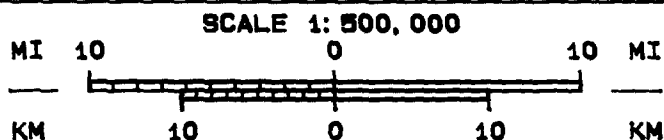
7. The foregoing Technical Statement and attached exhibits were prepared on behalf of Pinnacle Southeast, Inc., by Graham Brock, Inc., its Technical Consultants. All information contained herein is true and accurate to the best of our belief and knowledge. All data related to FM facilities was extracted from the NTIA database as updated on December 13, 1996. We assume no liability for errors or omissions in that database which may be adverse to the requests contained herein.



### CHANNEL 287B USABLE AREA

MAP IS A PORTION OF THE 1: 500, 000 SCALE U.S.G.S. BASE MAP OF INDIANA, KENTUCKY AND ILLINOIS.

MAP ASSUMES SEC. 73.215 SPACING LIMITS TO WKYA.



### EXHIBIT #1

COMMENTS & COUNTERPROPOSAL  
PINNACLE SOUTHEAST, INC.

MM DOCKET #96-220

WYNG-FM RADIO STATION  
EVANSVILLE, INDIANA

December 1995

**GRAHAM BROCK, INC.**

BROADCAST TECHNICAL CONSULTANTS

**USABLE AREA STUDY FOR WYNG-FM EVANSVILLE, INDIANA  
USING PRESENT WYNG-FM SITE AS REFERENCE**

REFERENCE	CLASS B	DISPLAY DATES
38 04 47 N		DATA 12-13-96
87 36 36 W	Current rules spacings	SEARCH 12-19-96
----- CHANNEL 287 -105.3 MHz -----		

CALL TYPE	CH# LAT	CITY LNG	STATE PWR	BEAR' HT	D-KM D-Mi	R-KM R-Mi	MARGIN (KM)
WYNGFM	287B	Evansville	IN	0.0	0.00	241.0	-241.00
LI CN	38 04 47	87 36 36	50.000 kW	119M	0.0	149.8	
Pinnacle Southeast, Inc.				BMLH-920320KB			
WITZFM	284B	Jasper	IN	62.5	65.89	74.0	-8.11
LI CN	38 21 02	86 56 26	50.000 kW	119M	41.0	46.0	
Jasper On the Air, Inc.				BLH-6255			
AD289	289A	Sturgis	KY	209.3	68.96	69.0	-0.04
AD	37 32 16	87 59 35	0.000 kW	OM	42.9	42.9	
JoeMyers Productions, Inc.				RM-8893 960927			
WOVO	287C3	Glasgow	KY	127.3	211.21	211.0	0.21
LI ZCN	36 54 50	85 43 20	25.000 kW	97M	131.3	131.1	
John P. Niland, Receiver				BLH-910730KA			
WFIWFM	285A	Fairfield	IL	298.3	70.96	69.0	1.96
LI CN	38 22 46	88 19 33	4.900 kW	111M	44.1	42.9	
Wayne County Broadcasting Co.				BLH-960731KF			
WOKZ	290A	Fairfield	IL	298.3	70.96	69.0	1.96
LI CN	38 22 46	88 19 33	6.000 kW	100M	44.1	42.9	
Wayne County Broadcasting Co.				BLH-960903KF			
WMPI	287A	Scottsburg	IN	66.6	182.10	178.0	4.10
LI CN	38 42 44	85 41 12	2.200 kW	156M	113.2	110.6	
D.R. Rice Broadcasting, Inc.				BLH-940411KE			
WUZR	289A	Bicknell	IN	13.3	74.19	69.0	5.19
LI CN	38 43 47	87 24 44	1.800 kW	130M	46.1	42.9	
Media Five Corporation				BLH-931122KF			
* WKYA	288A	Greenville	KY	160.2	104.24	96.0	8.24
LI DEN	37 11 45	87 12 38	3.000 kW	91M	64.8	59.6	
Starlight Broadcasting Company				BLH-811207AE			
WTAOFM	286B1	Murphysboro	IL	257.0	154.69	145.0	9.69
LI CN	37 45 15	89 19 14	25.000 kW	94M	96.1	90.1	
Liberty Radio, Inc.				BLH-920108KF			
AP289	289A	Tell City	IN	102.1	79.85	69.0	10.85
AP ZCN	37 55 33	86 43 19	4.800 kW	111M	49.6	42.9	
Bayard H. Walters				BPH-960823ME			
WKCMFM	289A	Hawesville	KY	102.1	79.85	69.0	10.85
LI CN	37 55 33	86 43 19	2.400 kW	109M	49.6	42.9	
WLME, Inc.				BLH-930528KD			

**CHANNEL 287B SPACING STUDY**

\* NOTE : THE REQUIRED DISTANCE SEPERATION  
IS BASED ON THE REQUIREMENTS OF  
SECTION 73.215 OF THE RULES.

**EXHIBIT #2**

**COMMENTS & COUNTERPROPOSAL  
PINNACLE SOUTHEAST, INC.  
MM DOCKET #96-220  
WYNG-FM RADIO STATION  
EVANSVILLE, INDIANA  
December 1996**

**GRAHAM BROCK, INC.**

BROADCAST TECHNICAL CONSULTANTS

ALLOCATION STUDY FOR STURGIS, KENTUCKY  
USING PROPOSED ALLOCATION SITE AS REFERENCE

REFERENCE		CLASS A	DISPLAY DATES
37 32 54 N			DATA 12-13-96
87 59 06 W		Current rules spacings	SEARCH 12-19-96
----- CHANNEL 267 -101.3 MHz -----			

CALL TYPE	CH# LAT	CITY LNG	STATE PWR	BEAR' HT	D-KM D-Mi	R-KM R-Mi	MARGIN (KM)
AD267	267A	Sturgis	KY	0.0	0.00	115.0	-115.00
AD	37 32 54	87 59 06	0.000 kW	OM	0.0	71.5	
Pinnacle Southeast, Inc.							
>Alternate channel - MM Docket #96-220							
WCILEM	268B	Carbondale	IL	280.4	113.97	113.0	0.97
LI CN	37 43 31	89 15 25	50.000 kW	107M	70.8	70.2	
Lyle Broadcasting Corporation BLH-900904KA							
AD267	267C3	Martin	TN	215.2	150.83	142.0	8.83
AD	36 26 09	88 57 30	0.000 kW	OM	93.7	88.3	
Thunderbolt Broadcasting Company RM-8876 960905							
WBGW	268A	Fort Branch	IN	31.8	82.60	72.0	10.60
LI CN	38 10 45	87 29 13	1.000 kW	171M	51.3	44.8	
Music Ministries, Inc. BLED-920128KA							
WQXQ	270C1	Central City	KY	87.1	87.88	75.0	12.88
LI CN	37 35 03	86 59 29	100.000 kW	204M	54.6	46.6	
Muhlenberg Broadcasting Company BLH-930826KA							
WJZC	266C1	Russellville	KY	134.2	161.82	133.0	28.82
LI CN	36 31 36	86 41 14	47.000 kW	393M	100.6	82.7	
Sinclair Radio of Nashville BLH-900328KC							
KGMO	264C	Cape Girardeau	MO	262.3	138.20	95.0	43.20
LI CN	37 22 16	89 31 52	100.000 kW	301M	85.9	59.0	
W. Russell Withers, Jr. BLH-920629KF							
ALOPEN	267C3	Tiptonville	TN	225.9	185.65	142.0	43.65
AL N	36 22 42	89 28 30	0.000 kW	OM	115.4	88.3	
MM Docket #90-22							
DE267	267C3	Tiptonville	TN	225.9	185.65	142.0	43.65
DE	36 22 42	89 28 30	0.000 kW	OM	115.4	88.3	
Thunderbolt Broadcasting Company RM-8876 960905							
WMCI.C	267B1	Neoga	IL	349.8	191.98	143.0	48.98
CPM CN	39 14 59	88 22 48	11.500 kW	147M	119.3	88.9	
Cromwell Group, Inc. BMPH-950818IG 961211							

CHANNEL 267A ALLOCATION STUDY

EXHIBIT #3  
COMMENTS & COUNTERPROPOSAL  
PINNACLE SOUTHEAST, INC.  
MM DOCKET #96-220  
WYNG-FM RADIO STATION  
EVANSVILLE, INDIANA  
December 1996

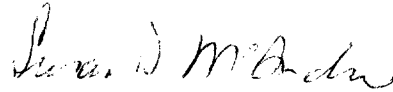
**GRAHAM BROCK, INC.**

BROADCAST TECHNICAL CONSULTANTS

CERTIFICATE OF SERVICE

I, Susan D. McAndrew, do certify that on this 23rd day of December, 1996, I caused copies of the foregoing "Comments and Counterproposal of Pinnacle Southeast, Inc." to be served to counsel for the petitioner of record, as listed below, by first class mail:

John F. Garziglia, Esq.  
Pepper & Corazzini, L.L.P.  
1776 K Street, N.W.  
Suite 200  
Washington, D.C. 20006

A handwritten signature in cursive script, appearing to read "Susan D. McAndrew", is written above a horizontal line.

Susan D. McAndrew